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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JACOB MANDEL, CHARLES VOLK, LIAM
KERN, MASHA MERKULOVA, AARON
PARKER, and STEPHANIE ROSEKIND,

Plaintiffs,

v.

BOARD OF TRUSTEES of the CALIFORNIA
STATE UNIVERSITY, SAN FRANCISCO
STATE UNIVERSITY, and, in their official and
individual capacities, LESLIE WONG, MARY
ANN BEGLEY, LUOLUO HONG, LAWRENCE
BIRELLO, REGINALD PARSON, OSVALDO
DEL VALLE, KENNETH MONTEIRO, RABAB
ABDULHADI, BRIAN STUART, ROBERT
NAVA, MARK JARAMILLA, VERNON
PICCINOTTI, and SHIMINA HARRIS,

Defendants.

Case No. 3:17-CV-03511-WHO

**PLAINTIFFS' OPPOSITION TO
ADMINISTRATION DEFENDANTS'
MOTION TO DISMISS THE ORIGINAL
COMPLAINT [ECF 40]**

Date: November 8, 2017
Time: 2:00 p.m.
Location: Courtroom 2 (17th floor)
Judge: William H. Orrick

Complaint Filed: June 19, 2017
First Am. Complaint Filed: August 31, 2017

1 While Plaintiffs believe the Administration Defendants’¹ Motion to Dismiss Plaintiffs’
 2 original Complaint is moot, out of an abundance of caution, Plaintiffs submit this opposition to the
 3 Motion to Dismiss the original Complaint, as it has not been withdrawn by the Administration
 4 Defendants.

5 When an amended complaint is filed, it supersedes the prior complaint, rendering it a legal
 6 nullity. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992) (citing *Hal Roach Studios v.*
 7 *Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990) (“an amended pleading supersedes the
 8 original”); 6 Charles A. Wright, Arthur R. Miller & Mary K. Kane, Federal Practice and Procedure
 9 § 1476, at 556-59 (1990) (“A pleading that has been amended under Rule 15(a) supersedes the
 10 pleading it modifies. Once an amended pleading is interposed, the original pleading no longer
 11 performs any function in the case”). The Administration Defendants filed a Motion to Dismiss
 12 Plaintiffs’ original Complaint on August 21, 2017. ECF 40. Subsequently, on August 31, 2017,
 13 Plaintiffs filed the First Amended Complaint as a matter of course, pursuant to Rule 15(a)(1)(B).
 14 ECF 57. The original Complaint is thus superseded, and is a legal nullity.

15 Pending motions based on a superseded complaint are rendered moot. *See Burchfield v.*
 16 *Corel Corporation*, 2013 WL 12120088, at *1 (N.D. Cal. Sept. 12, 2013); *see also Ramirez v.*
 17 *County of San Bernardino*, 806 F.3d 1002, 1009 (9th Cir. 2015) (“Because the Defendants’ motion
 18 to dismiss targeted the Plaintiff’s First Amended Complaint, which was no longer in effect, we
 19 conclude that the motion to dismiss should have been deemed moot before the district court granted
 20 it.”). Because Plaintiffs’ original Complaint is superseded, the Administration Defendants’ Motion
 21 to Dismiss the original Complaint is moot.

22 For these reasons, Plaintiffs respectfully request that the Court deny the Administration
 23 Defendants’ motion to dismiss Plaintiffs’ original Complaint as moot.

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 27 ¹ The “Administration Defendants” (or “Defendants,” for purposes of this opposition) include the
 28 Board of Trustees of the California State University, San Francisco State University, Leslie Wong,
 Mary Ann Begley, Luoluo Hong, Lawrence Birello, Reginald Parson, Osvaldo del Valle, Kenneth
 Monteiro, Brian Stuart, Robert Nava, Mark Jaramilla, Vernon Piccinotti, and Shimina Harris.

1 Dated: October 11, 2017

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3 By: /s/ Seth Weisburst

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